

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

January 27, 2009 Session

STATE OF TENNESSEE v. LARRY SIGMON REESE

Appeal from the Circuit Court for Blount County
No. C-15966 Jerry Scott, Senior Judge

No. E2007-02905-CCA-R3-CD - Filed April 24, 2009

A Blount County Circuit Court jury convicted the defendant, Larry Sigmon Reese, of one count of aggravated assault, and the trial court imposed a sentence of four years' incarceration. In this appeal, the defendant asserts that the trial court erred by denying his motion for judgment of acquittal at the close of the State's proof and that the trial court should have granted a mistrial. Discerning no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Robert W. White, Maryville, Tennessee, for the appellant, Larry Sigmon Reese.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; Mike Flynn, District Attorney General; and Ellen Berez, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On March 18, 2006, Bessie Waid was startled by "banging, like a frantic knock" on the front door of her Maryville, Tennessee residence. When she opened the door, her neighbor, Vivian Marie Reese, "kind of fell up against the wall" and said, "[D]on't let him get me, don't let him get me." Ms. Reese, whom Ms. Waid described as "trembling" and "shaking," explained that the defendant, her son Larry, was trying to "get her." Ms. Waid testified that the victim's face was bruised "and her whole eye was swollen almost shut." She added, "And she had a big place on her chin. She had blood coming out of her ear. And just different places on her face." Ms. Waid called for her husband, and the two brought the victim inside their home. Once inside the Waid residence, the victim "just went down" and began "crying uncontrollably." Ms. Waid, who had previously worked "in assisted living," began treating the victim "for shock." She explained, "I covered her with a quilt. I elevated her feet just a little. . . . She had blood coming out of her ear and . . . a knot behind her left ear, and she had a cut on her head. . . . I tried to keep her as calm as possible." Ms.

Waid testified that the victim never “completely” lost consciousness but was “not real, real coherent . . . when she was lying in the floor.”

Emergency personnel arrived a short time later and transported the victim to the hospital, where Ms. Waid visited her approximately half an hour later. Ms. Waid stated that the victim “looked worse than she did when she was at my house.” She explained, “[I]t was swollen more, her whole face was. And . . . it was discoloring more.”

Larry Waid testified that on March 18, 2006, the victim, who “had [been] beaten pretty severely,” came to his door for help. He recalled that he and his wife moved the victim inside the residence because he did not “think she could walk anymore.” After calling 9-1-1, Mr. Waid told his wife “to lock the door,” and then he went outside to “wait on the ambulance and make sure whoever did that to her wasn’t coming down there.” He described the victim as bruised and bloodied and recalled that “[s]he was crying and shaking so bad, [he] couldn’t hardly understand what she was saying at first.”

When Maryville Police Officer Matthew Jackson responded to Mr. Waid’s 9-1-1 call at approximately 2:00 p.m., he found the victim “clearly distraught, very fearful, crying fairly heavily.” Officer Jackson explained that his “first priority was to try to render aid to her,” but the victim was “clearly very fearful of anyone coming near her” and “would start to flail around” when the officer got close to her. He stated that the victim identified the defendant as her attacker. According to Officer Jackson, the victim “had a considerable number of . . . visible trauma marks around her face, the upper part of her forehead, sides of her head. She had a number of injuries to her facial area.” She also had “some swelling on . . . her left ear.” He described the victim’s mental status as semi-conscious, explaining, “At some points, she would be fairly slow-moving and sedated, moaning as she laid there, and then suddenly she would, for whatever reason, become very active and flail about - - mainly when somebody approached her or got close to her.”

Photographs of the victim taken by Officer Jackson depict numerous injuries to the victim’s face and head, including bruises to her left eye, left cheek, nose, and mouth. The victim’s left eye is swollen shut, and her left ear is blue and misshapen with swelling. Officer Jackson described the victim’s injuries as follows: “She has a series of abrasions across her forehead, a large . . . blue area that’s clearly visible around her eye, which appears to be causing her eye to nearly swell shut. There were a number of other injuries apparent around her face.” He added, “I observed around her left ear there . . . a tremendous amount of blueness around the inside and outside of her ear. There is also . . . a patch of similar trauma to the side of her head just behind and to the lower part of her ear.”

Officer Jackson testified that he questioned the victim about the incident, and she provided the following details:

She stated that her son, Larry Reese, had come home early that morning and . . . come in the house, went to his room. Later . . . that morning, he came out. They were kind of moving around the house a bit. At that point, they started to talk. She stated

that things started to become a little tense between the two of them. They just kind of continued floating throughout the house. It's starting to get a little bit more tense after that, bordering on an argument. She said at that point she tried to evacuate herself from the conflict by going outside.

She stated that she went outside to go rake leaves. He came out there. She, after a few minutes, went back inside in order to try to just put some distance between her and Mr. Reese. He then seemed to follow her around wherever she was going. This verbal conflict they were having continued. She went back out at one point, came inside, and then sat down in a chair in the living room. She then stated that the argument continued and [the defendant] was up walking around the living room and, without any warning or any particular provocation whatsoever, that's when he assaulted her.

. . . .

She described it to me as he had walked over, approached her, struck her in the side of the head, knocked her down, and then delivered a number of more blows to her head.

The victim told Officer Jackson that "after the assault had ceased for the moment, . . . she requested that he go get her a glass of water to drink." When the defendant "went towards the kitchen area to go get a glass of water," the victim left the residence through the front door.

After attending to the victim, Officer Jackson went to her residence to look for the defendant. He found the house empty and the back door open. Later that same night, Officer Jackson conducted an interview of the defendant at the Maryville Police Department. The videotaped interview was played for the jury.

Doctor Ronald Franz, who treated the victim in the emergency room, testified that the 85-year-old victim arrived at the emergency room with "swelling of her forehead and left eye and multiple bruises around her face and left ear." He recalled that the victim presented with "acute severe closed head injury with periorbital pain" and that she told him that the defendant "was going to kill" her. Doctor Franz stated that the victim "had severe edema and bruising on the ear, which is very difficult to obtain," and "edema throughout the face, with a lot of bruising."

Doctor Franz testified that injuries to the victim's left eye indicated "a trauma so hard that . . . it shatter[ed] the blood vessels underneath the skin." He stated that he ordered ice be applied to the eye trauma to prevent "continued swelling," which, he explained, would necessitate surgical "decompress[ion]." Doctor Franz testified that, because the victim's eye was "swollen shut," pressure from the edema "will just start pushing in on the globe, and when that pushes in on the globe, that raises the intraocular pressure, which causes her to throw up and then she'll lose her vision."

Referring to injuries to the victim's left ear, Doctor Franz explained, "[H]er external auditory canal, which is the hole that goes down to your tympanic membrane, is almost swollen shut. . . . [T]his edema . . . has to come from a force essentially so severe that it's got to bust that blood vessel and cartilage and make that bleed internally." He elaborated, "The only people you ever really see that happen to are extreme athletes, like wrestlers that will get like a cauliflower ear." Doctor Franz opined "with 100 percent certainty that [the victim's] life was in danger." He explained, "You don't see this kind of trauma on someone's ear and eye and don't have a risk of significant death. You just don't see it." Doctor Franz stated, "[W]hen you suffer these kinds of hematomas or wounds, bleeding of the face and the head, anyone can die from these kind of injuries. Not just an elderly person . . . that's a significant assault . . . to cause that kind of bleeding from cartilage and soft tissue."

The victim's daughter, Wanda Mize, testified that she first learned of the victim's altercation with the defendant when an emergency room nurse telephoned her at home. When Ms. Mize arrived at the hospital, the victim, who had been "very heavily sedated," was "very bruised around her face." She stated that the victim remained in the hospital overnight, and that it took several hours for the victim to become aware of Ms. Mize's presence in the room. Ms. Mize testified that the victim remained "[v]ery jumpy" until they left the hospital around lunch time the following day. Ms. Mize brought the victim to live with her after the incident. Pictures taken by Ms. Mize showed that the victim remained bruised and swollen for several weeks. Ms. Mize testified that injuries to the victim's left eye and ear remained visible for "four to six weeks."

During cross-examination, Ms. Mize testified that although the swelling and bruising dissipated after approximately six weeks, the victim "still continued to have trouble with the left eye." Upon questioning from the jury, Ms. Mize clarified that the victim required surgery on her left eye "because the lower eyelid turned in and the eyelashes rubbed her eyeball." Ms. Mize stated that "there[] [was] no way to prove that it was or wasn't" related to the attack by the defendant. She insisted, however, that the victim "did not have the problem as severely before the injury."

At the conclusion of Ms. Mize's testimony, the parties read into the record a stipulation of fact as follows: "That Mrs. Reese . . . had a preexisting condition prior to March 18th, 2006, related to her eye, regarding the eyelash information that Ms. Mize testified to, that is in no way related to the events in question in this hearing." The trial court also instructed the jury that "there's just no medical evidence to show that there's any relationship between the injury and the need for the surgery, based upon the records that [the parties] had examined . . . to a degree contrary to what her daughter testified to."

Because of the victim's "[advanced] age and infirmity," her testimony was presented in the form of a videotaped deposition. The victim testified that the defendant arrived at the residence "some time in the morning" of March 18, 2006. The victim was unable to recall much about the attack, stating, "[T]hat one lick is the only thing that I really remember." She stated that she could not recall how many times the defendant struck her, or even if he had struck her more than once. She recalled that she feared the defendant during the attack and asked for water to create a diversion so she could escape from the house.

The defendant offered no proof, and on the basis of the evidence presented by the State, the jury convicted the defendant of the single, charged offense of aggravated assault.

In this appeal, the defendant asserts that the trial court erred by denying his motion for a mistrial made after Ms. Waid testified that the defendant had assaulted the victim on a previous occasion. He also contends that the trial court erred by denying his motion for judgment of acquittal.¹

I. Mistrial

The defendant contends that the trial court erred by refusing to grant his request for a mistrial following Ms. Waid's testimony that the defendant had previously assaulted the victim. During Ms. Waid's direct examination, the following colloquy took place:

[Ms. Waid]: Could I say one more thing, sir?
[Defense Counsel]: Well, Your Honor - -
The Court: If - -
[Defense Counsel]: If there's a question, I may not quarrel with the statement, but I don't believe there's a question.
[Ms. Waid]: Well, the reason I went to the hospital, too - -
[Defense Counsel]: Well, Your Honor, if - -
[Prosecutor]: What's the reason you went to the hospital?
[Ms. Waid]: Well, I felt like the nurses and them should get a guard or security be notified - -
[Defense Counsel]: Your Honor, I object.
[Ms. Waid]: - - in case someone come and, you know, might continue to harm her.
[Defense Counsel]: Your Honor, I'm sorry, I object.
The Court: All right. I'll - -
[Ms. Waid]: Because he had done this before.

The trial court sustained defense counsel's objection to the testimony but refused to grant his request for a mistrial. Nevertheless, the trial court provided the following instruction regarding Ms. Waid's testimony:

The Jury will disregard that business about getting somebody to come be a guard and that sort of thing. This witness .

¹The State argues in its brief that the defendant failed to timely file a motion for new trial, ultimately resulting in an untimely filed notice of appeal. The record initially showed that the judgment was entered on July 10, 2007, and that on November 28, 2007, the defendant filed a "motion" to "amend" the motion for new trial. Later, the trial court clerk supplemented the appellate record to reflect that the "motion for new trial" was actually filed on August 1, 2007. Thus, the timely motion for new trial rendered the trial court's November 30, 2007 order overruling the motion for new trial effective as the order from which the appeal was taken via the December 21, 2007 notice of appeal. Accordingly, the notice of appeal was timely.

... doesn't have any background on which to make that statement. So I'll just instruct you to disregard that statement. . . .

....

And I'll specifically instruct you to disregard any statement about his having done this before. She has no basis for that knowledge and it's irrelevant if she did.

Whether to grant a mistrial is an issue entrusted to the sound discretion of the trial court. *See State v. McKinney*, 929 S.W.2d 404, 405 (Tenn. Crim. App. 1996). "Generally a mistrial will be declared in a criminal case only when there is a 'manifest necessity' requiring such action by the trial judge." *State v. Millbrooks*, 819 S.W.2d 441, 443 (Tenn. Crim. App. 1991). The burden of establishing the necessity for mistrial lies with the party seeking it. *State v. Williams*, 929 S.W.2d 385, 388 (Tenn. Crim. App. 1996). "The purpose for declaring a mistrial is to correct damage done to the judicial process when some event has occurred which precludes an impartial verdict." *Id.* On appeal, this court will disturb a trial court's denial of a motion for mistrial only when there is an abuse of discretion. *State v. Adkins*, 786 S.W.2d 642, 644 (Tenn. 1990); *Williams*, 929 S.W.2d at 388. An abuse of discretion occurs when the trial court applies an incorrect legal standard or reaches a conclusion that is "illogical or unreasonable and causes an injustice to the party complaining." *State v. Ruiz*, 204 S.W.3d 772, 778 (Tenn. 2006) (citing *Howell v. State*, 185 S.W.3d 319, 337 (Tenn. 2006)); *see also State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999).

Although Tennessee courts do not apply any exacting standard for determining when a mistrial is necessary after a witness has injected improper testimony, we have often considered (1) whether the improper testimony resulted from questioning by the State, rather than having been a gratuitous declaration, (2) the relative strength or weakness of the State's proof, and (3) whether the trial court promptly gave a curative instruction. *See State v. William Dotson*, No. 03C01-9803-CC-00105, slip op. at 9 (Tenn. Crim. App., Knoxville, June 4, 1999). That analytical framework is helpful in this case.

In this case, Ms. Waid, completely of her own volition and not in response to questioning by either party, implied that the defendant had previously assaulted the victim. The trial court appropriately ruled the evidence inadmissible and immediately ordered the jury to completely disregard the statement as unfounded and irrelevant. The proof against the defendant was more than overwhelming. The victim clearly identified the defendant as her attacker, and the defendant confessed the attack to Officer Jackson. Under these circumstances, the trial court did not err by refusing to grant the defendant's request for a mistrial.

II. Sufficiency of the Evidence

The defendant claims that the trial court erred by denying his motion for judgment of acquittal because the evidence was insufficient to sustain the conviction. The defendant made two motions for judgment of acquittal, one at the close of the State's proof and another with his motion

for new trial. Rule 29 of the Tennessee Rules of Criminal Procedure provides, in relevant part, as follows:

The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

Tenn. R. Crim. P. 29(a).

This rule empowers the trial judge to direct a judgment of acquittal when the evidence is insufficient to warrant a conviction either at the time the State rests or at the conclusion of all the evidence. *See generally Overturf v. State*, 571 S.W.2d 837 (Tenn. 1978). At the point the motion is made, the trial court must favor the opponent of the motion with the strongest legitimate view of the evidence, including all reasonable inferences, and discard any countervailing evidence. *Hill v. State*, 470 S.W.2d 853, 858 (Tenn. Crim. App. 1971).

The standard by which the trial court determines a motion for judgment of acquittal is, in essence, the same standard which applies on appeal in determining the sufficiency of the evidence after a conviction. *State v. Ball*, 973 S.W.2d 288, 292 (Tenn. Crim. App. 1998); *State v. Anderson*, 880 S.W.2d 720, 726 (Tenn. Crim. App. 1994). That is, “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *see* Tenn. R. App. P. 13(e).

Of critical importance in the present case, this court, in determining the sufficiency of the evidence, should not reweigh or reevaluate the evidence, *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990), and questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not the appellate court, *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Also, this court may not substitute its inferences for those drawn by the trier of fact from the evidence. *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956); *Farmer v. State*, 574 S.W.2d 49, 51 (Tenn. Crim. App. 1978). On the contrary, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Cabbage*, 571 S.W.2d at 835.

Moreover, a criminal offense may be established exclusively by circumstantial evidence, *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003); however, before an accused may be convicted of a criminal offense based upon circumstantial evidence alone, the facts and circumstances “must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant.” *State v. Crawford*, 470 S.W.2d 610, 612 (Tenn. 1971). “In other words, ‘[a] web of guilt must be woven around the

defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt.” *State v. McAfee*, 737 S.W.2d 304, 306 (Tenn. Crim. App. 1987) (quoting *Crawford*, 470 S.W.2d at 613).

Aggravated assault, as is applicable in this case, is “assault as defined in § 39-13-101” accompanied by “serious bodily injury.” T.C.A. § 39-13-102(a)(1) (2003). “‘Serious bodily injury’ means bodily injury that involves . . . [a] substantial risk of death; . . . [p]rotracted unconsciousness; . . . [e]xtreme physical pain; . . . [p]rotracted or obvious disfigurement; or . . . [p]rotracted loss or substantial impairment of a function of a bodily member, organ or mental faculty.” *Id.*, § 39-13-106(a)(34). In this case, the defendant concedes that he committed the brutal physical attack on the victim but insists that the State failed to establish that the victim suffered serious bodily injury. We disagree.

The evidence adduced at trial established that the 85-year-old victim suffered extensive bruising and swelling, particularly on her left eye and ear. Doctor Franz testified that the degree of swelling and bruising to these areas in particular was “extremely rare” and opined with “100% certainty” that the victim’s injuries were life threatening. Doctor Franz explained that the amount of force used to strike the victim had resulted in numerous broken capillaries under her skin to a degree that he had never before seen. Mr. and Ms. Waid explained that the victim collapsed upon entering their home, and Ms. Waid testified that she did all she could to keep the victim from going into shock or losing consciousness. The victim’s injuries required an overnight hospital stay, during which stay she received morphine for her pain. The photographs taken by Officer Jackson display the exaggerated degree of the victim’s injuries. Her left eye and ear were swollen completely shut, and her face was covered with bruises of numerous sizes in addition to the small ruptured capillaries. A “CT” scan showed a large area of bleeding under the victim’s scalp on the right side of her head. Photographs taken by Ms. Mize, as well as testimony from Ms. Mize, established that the bruises and swelling to the victim’s face lasted for over a month. This evidence more than sufficiently established that the victim suffered extreme physical pain, protracted and obvious disfigurement, and a substantial risk of death.

Accordingly, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE